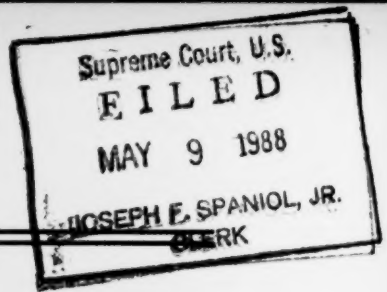


37-1924

No. _____



IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

RICHARD E. WILMSHURST, 49ER
CHEVROLET, INC.

Petitioner,

v.

CHEVROLET MOTOR DIVISION,
GENERAL MOTORS CORPORATION,

Respondent,

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**SUPPLEMENTAL APPENDIX
DISTRICT COURT ORDER OF DISMISSAL**

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49ER Chevrolet, Inc.

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APPENDIX C



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

49ER CHEVROLET and)
RICHARD E. WILMHURST,)

Plaintiffs,)

v.)

Civ. No. S-80-861-PCW

CHEVROLET MOTOR DIVISION)
OF THE GENERAL)
MOTORS CORPORATION,)

Defendant.)

FILED

JAN 23 2 17 PM '86

BY

DEPUTY

ORDER OF DISMISSAL

Defendant has moved to dismiss for failure to prosecute and for summary judgment in this action brought pursuant to the Dealer Day in Court Act, 15 U.S.C. § 1221 *et seq.* After reviewing the record and the additional citations submitted by plaintiffs and hearing the arguments of counsel on January 16, 1986, the Court finds that this action is proper for dismissal under Rule 41(b) of the Federal Rules of Civil Procedure. This ruling obviates the need for determination of the defendant's summary judgment motion.

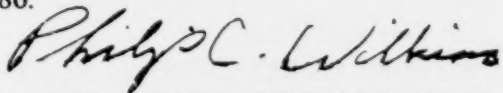
The complaint herein was filed on October 30, 1980, and in December, 1981 plaintiffs asked this Court to enter a temporary restraining order and a preliminary injunction requiring defendant to continue treating plaintiff 49er Chevrolet as a franchisee. Both motions and a motion for reconsideration were denied by this Court, and an untimely appeal was dismissed by the Ninth Circuit Court of Appeals.

For a period of three and a half years, since the dismissal of the appeal in August, 1982, plaintiffs have taken no action in this case. Moreover,

plaintiffs at this time are clearly precluded from obtaining the injunctive relief they sought and may very well be precluded from obtaining damages because of related litigation decided adversely to them in state administrative and court proceedings and in another federal court.

IT IS THEREFORE ORDERED that defendant's motion to dismiss the action for failure to prosecute be, and the same is, hereby granted, and the action is dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

DATED: January 21, 1986.

A handwritten signature in cursive script, reading "Philip C. Watkins". The signature is written in dark ink and is positioned above the printed name of the judge.

UNITED STATES DISTRICT JUDGE

